

E-FILED 3/19/08

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEVI STRAUSS & CO., No. C 07-05896 RS

Plaintiff,

v.

CASE MANAGEMENT
SCHEDULING ORDER

THE WET SEAL, INC.,

Defendant.

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, a Case Management Conference was held on March 19, 2008. After considering the Case Management Statement and Proposed Order submitted by the parties and consulting with the attorneys of record for the parties and good cause appearing, **IT IS HEREBY ORDERED THAT:**

1. ALTERNATIVE DISPUTE RESOLUTION

MEDIATION. Pursuant to the parties' stipulation, this matter was referred to mediation to be completed within one hundred twenty (120) days, if possible. The parties shall promptly notify the Court whether the case is resolved at the mediation.

2. DISCOVERY.

On or before **October 31, 2008**, all non-expert discovery shall be completed by the parties. Any discovery requests pursuant to Rule 33-36 and 45, F.R.Civ.P. shall be served far enough in advance so that responses to written discovery shall be due, as provided in said rules, no

1 later than the discovery completion date. All depositions shall be concluded by the discovery
2 completion date.

3 Discovery shall be limited as follows: (a) **ten (10)** non-expert depositions per party;
4 (b) **twenty-five (25)** interrogatories per party, including all discrete subparts; (c) a reasonable
5 number of requests for production of documents or for inspection per party; and (d) a reasonable
6 number of requests for admission per party.

7 3. **EXPERT WITNESSES.** The disclosure and discovery of expert witness opinions
8 shall proceed as follows:

9 A. On or before **November 14, 2008**, plaintiff shall disclose expert testimony and
10 reports in accordance with Rule 26(a)(2), F.R.Civ.P.

11 B. On or before **November 28, 2008**, defendant shall disclose expert testimony and
12 reports in accordance with Rule 26(a)(2), F.R.Civ.P.

13 C. On or before **January 15, 2009**, all discovery of expert witnesses pursuant to
14 Rule 26(b)(4), F.R.Civ.P. shall be completed.

15 4. **PRETRIAL MOTIONS.** All pretrial motions must be filed and served pursuant to
16 Civil Local Rule 7. All pretrial motions shall be **heard** no later than **March 18, 2009**.

17 5. **PRETRIAL STATEMENTS.** At a time convenient to both, counsel shall meet and
18 confer to discuss preparation of a joint pretrial statement and on or before **April 6, 2009**, counsel
19 shall file a Joint Pretrial Statement in accordance with the attached Standing Order re: Pretrial
20 Preparation.

21 6. **PRETRIAL CONFERENCE.** The final pretrial conference will be held on **April 15,**
22 **2009 at 2:30 p.m.**, in Courtroom 4 at the United States Courthouse, 280 S. First Street, San Jose,
23 California. Each party or lead counsel who will try the case shall attend personally. Counsel shall
24 comply with the attached Standing Order re: Pretrial Preparation.

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1 7. TRIAL DATE. Jury trial shall commence on **April 27, 2009 at 9:00 a.m.**, in
2 Courtroom 4, United States Courthouse, San Jose, California.

IT IS SO ORDERED.

4 | DATED: March 19, 2008


RICHARD SEEBORG
United States Magistrate Judge

United States District Court

For the Northern District of California

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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 STANDING ORDER FOR FINAL PRETRIAL CONFERENCE
10 IN JURY CASES BEFORE MAGISTRATE JUDGE RICHARD SEEBORG
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13 A. **Required Meeting and Disclosure Prior to Pretrial Conference:** At
14 least 21 days before the final Pretrial Conference, lead counsel who will
try the case shall meet and confer with respect to:

15 1. Settlement of the case;
16 2. Preparation and content of the Joint Pretrial Statement and Order
17 in accordance with this Standing Order;
18 3. Preparation and exchange of pretrial materials to be served and
19 lodged pursuant to Rule 26(a)(3) F.R. Civ. P. and this Standing
Order; and,
20 4. Clarifying and narrowing the contested issues for trial in order to
achieve a just, speedy and efficient determination of the case.

21 B. **Joint Pretrial Statement and Order:** At least ten (10) days before the
22 Pretrial Conference, unless otherwise ordered, the parties shall lodge
23 and serve a Joint Pretrial Statement and Proposed Order containing the
24 following information:
25 1. **Substance of the Action.** A brief description of the parties, the
substance of claims and defenses that remain to be decided, and
the operative pleadings that raise the issues;
26 2. **Relief Prayed.** A detailed statement of all relief claimed,
particularly itemizing all elements of damages claimed;
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United States District Court
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3. Amendments or Dismissals. A statement of proposed
amendments to pleadings or dismissals of parties, claims or
defenses;
4. Undisputed Facts. A plain and concise statement of all relevant
facts to which the parties will stipulate for incorporation into the
trial record without the necessity of supporting testimony or
exhibits. The parties shall exercise good faith in stipulating to
facts that are not reasonably disputable;
5. Disputed Factual Issues. A plain and concise list of the issues of
fact that are contested and remain to be litigated at trial;
6. Agreed Statement. A statement assessing whether all or part of
the action may be presented upon an agreed statement of facts;
7. Stipulations. A statement of proposed stipulations or agreements
that will expedite the presentation of evidence;
8. Witnesses to be Called. A list of all witnesses likely to be called
at trial, other than solely for impeachment or rebuttal, together
with a brief statement following each name describing the
substance of the testimony to be given. No party shall be
permitted to call any witness in its case in chief that is not
disclosed in its pretrial statement without leave of court for good
cause;
9. Exhibits, Schedules and Summaries. A list of all documents and
other items to be offered as exhibits at the trial, other than solely
for impeachment or rebuttal, with a brief statement following
each, describing its substance or purpose and the identity of the
sponsoring witness;
10. Disputed Legal Issues. Without extended legal argument, a
concise statement of each disputed point of law concerning
liability or relief, citing supporting statutes and decisions;
11. Pending Motions or Matters. A statement of any motions or
matters that must be resolved prior to trial;
12. Bifurcation, Separate Trial of Issues. A statement of whether
bifurcation or a separate trial of specific issues is feasible and
desired;
13. Estimate of Trial Time. An estimate of the number of hours or
days needed for the trial; and,
14. Miscellaneous. Any other matters that will facilitate the just,
speedy and efficient determination of the action.
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1 **C. Binding Effect of the Joint Pretrial Statement and Order:** The Joint
2 Pretrial Statement and Order described above shall recite, directly
3 above the signature lines of each party, the following:

4 The foregoing admissions having been made by the parties, and the
5 parties having specified the foregoing issues of fact and law remaining
6 to be litigated, this order shall supplement the pleadings and govern the
7 course of trial of this cause, unless modified to prevent manifest
8 injustice.

9 **D. Preparation For Trial**

10 1. Exhibits:

11 a. At least (10) days before the final Pretrial Conference, the
12 parties shall exchange copies of all exhibits, summaries,
13 charts, and diagrams to be used at trial other than solely for
14 impeachment or rebuttal.

15 b. Each exhibit shall be premarked for identification. Counsel
16 shall meet and confer and reach agreement upon a method
17 for marking exhibits (for example, Plaintiff shall use
18 numbers and Defendant shall use letters, or Plaintiff shall
19 use numbers 100-199 and Defendant shall use numbers
20 200-299, etc.).

21 c. Unless otherwise ordered, at least five (5) days prior to the
22 commencement of trial the parties shall deliver three sets
23 of all premarked exhibits contained in three ring binders to
24 the judge's deputy clerk.

25 d. No party shall be permitted to offer any exhibit at trial that is
26 not disclosed in its pretrial statement without leave of court
27 for good cause, unless it is offered solely for impeachment
28 or rebuttal.

29 2. Motions in Limine: Unless otherwise ordered, the parties shall
30 file and serve any motions in limine at least ten (10) days before
31 the final Pretrial Conference, and any oppositions thereto at least
32 three (3) days before the final Pretrial Conference. Ordinarily,
33 these motions will be deemed submitted without oral argument.

34 3. Deposition and Discovery Designations: Unless otherwise
35 ordered, at least five (5) days before the commencement of trial,
36 the parties shall file and serve any excerpts of deposition
37 testimony or other discovery to be offered at trial, other than
38 solely for impeachment or rebuttal. (A copy of the designated
39 deposition testimony with page and line references, or the
40 interrogatory response or admission shall be provided). Any
41 objections to the use of designated excerpts and any counter-
42 designations of deposition testimony shall be filed and served
43 prior to the commencement of trial.

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2 4. Jury Materials:

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4 a. Unless otherwise ordered, at least five (5) days prior to the
5 pretrial conference, the parties shall file and serve:
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7 (1) Jury Voir Dire Questions;
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9 (2) Proposed Jury Instructions; and
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11 (3) Proposed Jury Verdict Forms.
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13 b. Ordinarily, the court will give the standard preliminary jury
14 instructions contained in the Model Jury Instructions of the
15 Ninth Circuit prior to opening statements and will give the
16 standard closing instructions in the Model Jury Instructions
17 of the Ninth Circuit before closing arguments.
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19 c. As to substantive case specific instructions, the parties
20 shall meet and confer and submit jointly an agreed set of
21 instructions, using the Model Jury Instructions of the Ninth
22 Circuit where appropriate. In the event the parties are
23 unable to agree to the language of a particular instruction,
24 the objecting party shall submit a written objection or an
25 alternative proposed instruction placed in sequence
26 immediately following the disputed instruction. The joint set
27 of jury instructions shall be submitted in hard copy as well
28 as via email to bernie_kunkel@cand.uscourts.gov.

5. Trial Briefs: Trial briefs are optional, but any party wishing to file
a trial brief must do so not less than five (5) days prior to the
commencement of trial.

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19 IT IS SO ORDERED.
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22 DATED: October 23, 2001
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28 /s/ Richard Seeborg
RICHARD SEEBORG
United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER WAS ELECTRONICALLY
2 PROVIDED TO:**

3 Marcy Jill Bergman Mbergman@cwclaw.com, vtoke@cwclaw.com

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9 Counsel are responsible for distributing copies of this document to co-counsel who have not
10 registered for e-filing under the court's CM/ECF program.

11 Dated: March 19, 2008

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13 /s/ BAK
14 Chambers of Magistrate Judge Richard Seeborg
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